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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

13 Cr. 616 VB

5 JOHANNES THALER,

6 Defendant.

7 -----x

8 October 17, 2014

10:45 a.m.

9 White Plains, N.Y.

10 Before:

11 HON. VINCENT L. BRICCETTI,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

United States Attorney for the

15 Southern District of New York

EMILY RAE WOODS

16 TODD BLANCHE

Assistant United States Attorney

17 FEDERAL DEFENDERS UNIT

18 Attorney for Defendant

JASON SER

19  
20 KERWIN JOHN, DOJ

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1 THE COURTROOM DEPUTY: United States v. Thaler. Will  
2 counsel please note their appearances.

3 MS WOODS: Rae Woods from the government. With me is  
4 Todd Blanche and Special Agent Kerwin John.

5 MR. SER: Jason Ser for Mr. Thaler.

6 THE COURT: Good morning, everybody, have a seat.

7 Mr. Ser, does your client have an application?

8 MR. SER: The defendant, Mr. Thaler, requests that the  
9 Court take a guilty plea from him on Counts 2 and 4 of the  
10 indictment in case, 13 Cr. 616.

11 THE COURT: That would be in full satisfaction of the  
12 indictment?

13 MR. SER: Correct, your Honor.

14 THE COURT: Okay. Mr. Thaler, I've been advised that  
15 you wish to plead guilty to Counts 2 and 4 of indictment  
16 13 Cr. 616. Is that correct?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Before I accept your guilty plea I'm going  
19 to ask you a number of questions and it's important that you  
20 answer these questions honestly and completely. The purpose of  
21 my questions is to make sure you understand your rights and  
22 that you're pleading guilty of your own free will. I also want  
23 to make sure that you're pleading guilty because you are guilty  
24 and not for some other reason and that you understand the  
25 consequences of your plea. Therefore, it's very important that

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1 you understand every question before you answer it. If there's  
2 any question that you do not understand, don't answer it, just  
3 tell me that you don't understand it, I'll either try to  
4 rephrase it or I'll give you whatever opportunity you need to  
5 speak to your attorney about that. Will you do that?

6 THE DEFENDANT: Yes, sir.

7 (Defendant placed under oath)

8 BY THE COURT:

9 Q. Mr. Thaler, you're now under oath. What that means is if  
10 you answer any of my questions falsely your answers could later  
11 be used against you in a prosecution for perjury or for making  
12 a false statement. Do you understand that?

13 A. Yes, your Honor.

14 Q. What is your full name?

15 A. Johannes Walter Thaler.

16 Q. How old are you?

17 A. 51.

18 Q. How far did you go in school?

19 A. Three years of college.

20 Q. Where was that?

21 A. Some Roanoke, Virginia and some in Westchester Community  
22 College.

23 Q. Are you now or have you recently been under the care of a  
24 doctor or psychiatrist?

25 A. No.

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1 Q. Have you ever been treated or hospitalized for any mental  
2 illness?

3 A. Yes.

4 Q. Can you just tell me what that treatment or hospitalization  
5 was for and what was the outcome?

6 A. I had a bout of depression seven years ago I think it was.

7 Q. Approximately when was that?

8 A. I think 2007.

9 Q. Approximately seven years ago?

10 A. Seven years ago.

11 Q. Were you hospitalized for that?

12 A. Yes, for three days.

13 Q. Have you received follow-up treatment for that? It's a  
14 very --

15 A. I have not.

16 Q. You're not currently in treatment for that?

17 A. No, not currently.

18 Q. Just wait for me to finish my question before you answer.  
19 I know you're trying to be helpful. For the Court reporter's  
20 benefit let me finish and then you can answer the question.

21 Have you ever been treated or hospitalized for any  
22 addiction to drugs or alcohol?

23 A. No, sir.

24 Q. In the last 24 hours have you taken any drugs or any  
25 medicine or pills or consumed any alcohol?

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1 A. No, sir.

2 Q. No medicine, no pills, no drugs, no alcohol?

3 A. No.

4 Q. Is your mind clear today?

5 A. Yes, sir.

6 Q. Do you understand what's happening here today?

7 A. Yes, sir.

8 Q. Have you had enough time and opportunity to discuss your  
9 case with your attorney?

10 A. Yes, I have.

11 Q. Did you discuss with him the charges against you including  
12 any possible defenses you might have?

13 A. Yes, sir.

14 Q. Did you discuss with him the consequences of entering a  
15 plea of guilty?

16 A. Yes, sir.

17 Q. Are you satisfied with your attorney's representation of  
18 you?

19 A. Yes, I am, your Honor.

20 THE COURT: Does either counsel have any doubt as to  
21 the defendant's competence to plead guilty at this time?

22 Ms Woods?

23 MS WOODS: No, your Honor.

24 THE COURT: Mr. Ser?

25 MR. SER: No, your Honor.

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1 THE COURT: Based on the defendant's responses to my  
2 questions and my observations of his demeanor I find that he is  
3 fully competent to enter an informed guilty plea at this time.

4 Q. Mr. Thaler, I'm now going to explain certain constitutional  
5 rights that you have, and these are rights that you will be  
6 giving up if you enter a guilty plea. So once again, please  
7 stop me if there's anything you do not understand and either I  
8 or your attorney will explain the matter more fully.

9 First, under the Constitution and laws of the United  
10 States, you have a right to plead not guilty to the charges  
11 contained in the indictment. Do you understand that?

12 A. Yes.

13 Q. If you did plead not guilty or persist in your previously  
14 entered not guilty plea you would be entitled a speedy and  
15 public trial by a jury on the charges contained in the  
16 indictment. Do you understand that?

17 A. Yes.

18 Q. At that trial you would be presumed to be innocent and the  
19 government would be required to prove you guilty by competent  
20 evidence beyond a reasonable doubt before you could be found  
21 guilty. You would not have to prove that you were innocent.  
22 Do you understand that?

23 A. Yes, I do.

24 Q. If there were a jury trial you could not be convicted  
25 unless a jury of twelve people unanimously agreed that you were

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1 guilty beyond a reasonable doubt. Do you understand that?

2 A. Yes, I do.

3 Q. At that trial and at every other stage of the case you  
4 would have the right to be represented by an attorney. If you  
5 could not afford an attorney, the Court would appoint one to  
6 represent you at no cost to you. Do you understand that?

7 A. Yes.

8 Q. I understand that Mr. Ser has been appointed to represent  
9 you in this case, is that correct?

10 A. Yes.

11 Q. During a trial, the witnesses for the government would have  
12 to come to court and testify in your presence where you could  
13 see them and hear them. Your lawyer could cross-examine those  
14 witnesses and object to evidence offered by the government.  
15 Also, your lawyer could offer evidence on your behalf and you  
16 would be able to use subpoenas to compel witnesses to come to  
17 court and testify in your defense even if they did not want to  
18 come. Do you understand all of that?

19 A. Yes, sir.

20 Q. At a trial you would have the right to testify if you chose  
21 to do so. You would also have the right not to testify. If  
22 you chose not to testify, that could not be used against you in  
23 any way. No inference or suggestion of guilty could be drawn  
24 from the fact that you did not testify. Do you understand  
25 that?

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1 A. Yes, sir.

2 Q. If you were convicted at a trial you would have the right  
3 to appeal that verdict to a higher court. Do you understand  
4 that?

5 A. Yes, your Honor.

6 Q. Even now you have the right to change your mind; in other  
7 words, you don't have to plead guilty. You can persist in your  
8 plea of not guilty and go to trial. Do you understand that?

9 A. Yes, sir.

10 Q. But, if you do plead guilty and I accept your plea you will  
11 be giving up your right to a trial and all of the other trial  
12 rights that go with it that I've just described. If you plead  
13 guilty there will be no trial and I will enter a judgment of  
14 guilty and sentence you on the basis of your guilty plea after  
15 considering a presentence report prepared by the Probation  
16 Department and after considering submissions I get from you,  
17 your attorney and the government. Do you understand that?

18 A. Yes, your Honor.

19 Q. Finally, if you plead guilty you will also be giving up  
20 your right not to incriminate yourself and I'll ask you  
21 questions about what you did in order to satisfy myself that  
22 you are in fact guilty as charged. Do you understand that?

23 A. Yes, I do.

24 Q. Have you received a copy of the indictment in this case?

25 A. Yes, I have, your Honor.



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1 Q. Have you read it?

2 A. Yes, I have.

3 Q. Have you discussed it with your attorney?

4 A. Yes.

5 Q. Do you understand that in Counts 2 and 4 you are charged as  
6 follows, and I'm just going to quickly summarize it, I'm not  
7 going to reread the indictment since you've already read it.

8 In Count 2, in summary, you're charged with aiding and abetting  
9 the bribery of a public official; specifically, that you aided  
10 and abetted your co-defendant, Robert Lustyik, who was at the  
11 time a special agents with the Federal Bureau of Investigation,  
12 in soliciting cash payments in return for disclosing  
13 confidential governmental information to which Mr. Lustyik had  
14 access by virtue of his position as a special agent with the  
15 FBI. Do you understand that that's the gist of what you're  
16 charged with in Count 2?

17 A. Yes, sir.

18 Q. In Count 4 you're charged with conspiracy to defraud the  
19 citizens of the United States and the Federal Bureau of  
20 Investigation, often referred to as honest services fraud. In  
21 this case the allegation is that you conspired with Mr. Lustyik  
22 and Rizve Ahmed, your co-defendants, to committing offenses  
23 against the United States, specifically wire fraud. And we'll  
24 talk about that a little bit more later. Do you understand in  
25 Count 4 you're charged with a conspiracy to commit wire fraud

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1 and honest services fraud in violation of Section 1349 of Title  
2 18?

3 A. Yes, sir.

4 THE COURT: Ms Woods, could you spell out for me the  
5 essential elements of the offense charged in Count 2, which is  
6 the aiding and abetting bribery of a public official charge.

7 MS WOODS: The essential elements include: First,  
8 that the offense involved a public official; second, that the  
9 public official solicited, accepted and agreed to accept a  
10 thing of value; third, that the public official did so  
11 corruptly with the intent to be influenced in the performance  
12 of an official act; and finally, that the defendant aided and  
13 abetted that offense.

14 THE COURT: Could you now spell out for me the  
15 elements of Count 4.

16 MS WOODS: The elements for Count 4 include the  
17 following: First, that the defendant agreed with at least two  
18 other people; second, that the defendant willfully joined in  
19 that agreement, third, that one of the conspirators committed  
20 an overt act during the time period of the conspiracy in an  
21 effort to further the conspiracy; and fourth, that the  
22 agreement involved an agreement to commit an offense against  
23 the United States, specifically honest services wire fraud.

24 THE COURT: Thank you.

25 Q. Mr. Thaler, do you understand that if you did not plead

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1 guilty to Count 2 and Count 4 the government would have to  
2 prove each and every element of those charges beyond a  
3 reasonable doubt at trial?

4 A. Yes, your Honor.

5 Q. Do you understand that the maximum possible penalties for  
6 these offenses are as follows? First, I'll talk about Count 2.  
7 The maximum term of imprisonment is 15 years; there is a  
8 possible maximum term of supervised release of three years; a  
9 maximum fine of the greatest of \$250,000 or twice the gross  
10 pecuniary gain derived from the offense or twice the gross  
11 pecuniary loss to persons other than you resulting from the  
12 offense; and there's also a one hundred dollar mandatory  
13 special assessment. Those are all the possible maximum  
14 penalties on Count 2 and in the case of the mandatory special  
15 assessment that's a mandatory penalty.

16 Now, on Count 4, the maximum possible penalties are as  
17 follows: The maximum term of imprisonment is 20 years; a  
18 maximum term of supervised release of three years; a maximum  
19 fine of the greatest of \$250,000 or twice the gross pecuniary  
20 gain derived from the offense or twice the gross pecuniary loss  
21 to persons other than you resulting from the offense; and  
22 there's also a one hundred dollar mandatory special assessment.

23 Do you understand that those are the maximum possible  
24 penalties for those two offenses?

25 A. Yes, your Honor.

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1 Q. Let me just tell you something about supervised release  
2 which I mentioned. Supervised release means that if I sentence  
3 you to prison, you will be subject to monitoring after you are  
4 released from prison and there are certain rules and conditions  
5 of supervised release that you have to follow. If you violated  
6 those rules, you could be returned to prison without a jury  
7 trial to serve additional time even beyond your original  
8 sentence, and if that were to happen, you would be given no  
9 credit for time served in prison on your original sentence and  
10 no credit for any time spent on supervised release. Do you  
11 understand that?

12 A. Yes, sir.

13 Q. Do you also understand that parole has been abolished in  
14 the federal system and that if you are sentenced to prison you  
15 will not be released early on parole? Do you understand that?

16 A. Yes, sir.

17 Q. Are you a United States citizen?

18 A. Yes, sir.

19 Q. As part of your sentence, I can also order restitution to  
20 any person injured as a direct result of your criminal conduct,  
21 do you understand that?

22 A. Yes, sir.

23 THE COURT: Ms Woods, is there any basis for  
24 restitution in this case?

25 MS WOODS: No, your Honor.

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1 THE COURT: As far as you know.

2 MS WOODS: No.

3 Q. It's important you know that in theory I could impose an  
4 order of restitution but only if there is evidence that someone  
5 was harmed directly as a result of your criminal conduct and  
6 suffered some sort of loss. The government is telling me that  
7 she's not aware of any basis for a restitution order in this  
8 case. You do understand that in theory I could impose  
9 restitution, do you understand that?

10 A. Yes.

11 Q. There are no mandatory minimums for either of these  
12 offenses except for the one hundred dollar special assessment.  
13 So if I accept your guilty plea and adjudicate you guilty I  
14 have to impose the one hundred dollar special assessment on  
15 both offenses, but other than that there are no mandatory  
16 minimums. Do you understand that?

17 A. Yes, your Honor.

18 Q. Do you also understand that because you're pleading guilty  
19 to two different counts in the indictment, I will be imposing a  
20 separate sentence on each of those two counts? Do you  
21 understand that?

22 A. Yes.

23 Q. In other words, if I accept your plea on both Counts 2 and  
24 4, ultimately I'm going to impose a sentence on Count 2 and a  
25 separate sentence on Count 4, do you understand that?

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1 A. Yes, sir.

2 Q. Do you further understand that I may, although I'm not  
3 required to, but I may order you to serve the sentences on  
4 those two counts either concurrently, meaning at the same time,  
5 or consecutively, meaning that you would serve the sentences  
6 one after the other. Do you understand that I may do that?

7 A. Yes, sir.

8 Q. So do you further understand that if I impose consecutive  
9 sentences your total sentence could be a maximum total of 35  
10 years imprisonment?

11 A. Yes.

12 Q. Because on Count 2, the maximum sentence is 15 years, and  
13 on Count 4, it's 20. So if you add them together it's 35  
14 years, do you understand that?

15 A. Yes.

16 Q. Do you further understand that if I accept your guilty plea  
17 and adjudge you guilty that adjudication may deprive you of  
18 valuable civil rights such as the right to vote, the right to  
19 hold public office, the right to serve on a jury, the right to  
20 possess any kind of firearm, and the right to hold certain  
21 professional licenses?

22 A. Yes, sir.

23 Q. Now, have you talked to your attorney about how the Federal  
24 Sentencing Guidelines apply to your case?

25 A. Yes, I have, your Honor.

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1 Q. In imposing sentence I'm required to consider the  
2 Sentencing Guidelines which are a set of rules and  
3 recommendations for determining an appropriate sentence. I  
4 have to calculate the applicable sentencing guideline range,  
5 consider that range, and I also have to determine whether there  
6 should be any upward or downward departure from the range.  
7 Now, while I must pay attention to the guidelines in  
8 determining your sentence, in the end I'm required to impose a  
9 sentence that I believe best satisfies the purposes of the  
10 criminal law based on the sentencing factors set forth in  
11 Section 3553(a) of Title 18 of the United States Code, even if  
12 that sentence is higher or lower than what the guidelines  
13 recommend. Do you understand that?

14 A. Yes, sir.

15 Q. I won't be able to determine how the guidelines apply to  
16 your case until after a presentence report has been prepared by  
17 the Probation Office and you and the government have had a  
18 chance to comment on or challenge anything in the report. Do  
19 you understand that?

20 A. Yes, sir.

21 Q. Do you understand that if your attorney or anyone else has  
22 attempted to predict what your sentence will be that prediction  
23 could be wrong?

24 A. Yes, sir.

25 Q. I'm telling you this because you need to understand that no

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1 one can be sure now what your sentence will be. It's my job to  
2 decide what your sentence will be and I'm not going to do that  
3 now. I'm going to wait until after the presentence report is  
4 completed and I've ruled on any challenges to the report,  
5 calculated the sentencing range, determined whether there are  
6 grounds to depart from the range and considered the factors set  
7 forth in Section 3553(a). So what all of that means is that  
8 nobody, not even I, can predict what the sentence will be in  
9 your case. Do you understand that?

10 A. Yes, your Honor.

11 Q. Do you also understand that even if you're sentence is  
12 different from what your attorney or anyone else told you it  
13 might be, or if it's different in what you expected it to be,  
14 or what may be contained in the plea agreement, once you've  
15 pleaded guilty you will not be allowed to withdraw your plea?  
16 Do you understand all that?

17 A. Yes, sir.

18 Q. Has anyone threatened you or coerced you in any way or  
19 tried to force you to plead guilty?

20 A. No, sir.

21 Q. Has anyone other than the prosecution promised you anything  
22 or offered you anything in order to get you to plead guilty?

23 A. No, sir.

24 Q. I've been given a letter dated October 15, 2014 from the  
25 prosecutor to your attorney which is a plea agreement between



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1 you and the government. I'm going to have it marked as Court's  
2 Exhibit 1. And I'm going to ask my courtroom deputy to verify  
3 that your signature appears on page 6 of Court's Exhibit 1.

4 THE COURTROOM DEPUTY: Mr. Thaler, is that your  
5 original signature signed today, October 17, 2014?

6 THE DEFENDANT: Yes, ma'am.

7 Q. Mr. Thaler, did you read this agreement prior to signing  
8 it?

9 A. Yes, your Honor.

10 Q. Did you discuss it with your attorney before you signed it?

11 A. Yes, sir.

12 Q. Did you discuss every aspect of it with your attorney?

13 A. Yes, sir.

14 Q. And at the time you signed the agreement, did you  
15 understand the agreement?

16 A. Yes, sir.

17 Q. Is this plea agreement the entire agreement between you and  
18 the government?

19 A. Yes, sir.

20 Q. Is there any agreement, promise or understanding between  
21 you and the government that is not set forth in this agreement?

22 A. No, sir.

23 Q. Has anyone coerced you or forced you or threatened you to  
24 enter into the plea agreement?

25 A. No, sir.

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1 Q. Other than what's set forth in the plea agreement, has  
2 anyone promised you anything or offered you any inducement to  
3 plead guilty or to enter into the plea agreement?

4 A. No, sir.

5 Q. Has anyone made a promise to you as to what your sentence  
6 will actually be?

7 A. No, sir.

8 Q. It appears that you and the government have stipulated to,  
9 which simply means agreed to, the appropriate calculation of  
10 your sentencing range under the guidelines, although I notice  
11 there is an agreement to disagree included in here, but there  
12 is an agreement that the guideline range is somewhere between  
13 51 and 87 months imprisonment. Is that right, that you  
14 stipulated to that as set forth in the agreement?

15 A. Yes, your Honor.

16 Q. Do you understand that the guidelines stipulation in the  
17 agreement is binding on you, binding on the government, but  
18 it's not binding on me?

19 A. Yes, your Honor.

20 Q. Do you understand that regardless of what you and the  
21 government have agreed to I'm going to make my own  
22 determination of your guideline range?

23 A. Yes, your Honor.

24 Q. And do you understand that under certain circumstances both  
25 you and the government have the right to appeal any sentence

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1 that I might impose subject to the terms of the plea agreement?

2 A. Yes, sir.

3 Q. And I see that on pages 4 and 5 of the plea agreement

4 there's what we often refer to as an appeal waiver provision.

5 Do you understand that under the plea agreement you are giving

6 up your right to appeal or otherwise challenge your sentence so

7 long as I sentence you to 87 months of imprisonment or less?

8 A. Yes, sir.

9 THE COURT: Let me just digress for one moment. I see

10 in the plea agreement that there is this question left open

11 about one possible guideline enhancement under 3A1.2 which is

12 as I recall an official victim enhancement. I also recall that

13 that applies to individuals who are victims. I'm not resolving

14 anything today, but just for my own edification, in a very

15 general sense what is the government's position as to why

16 there's an enhancement under 3A1.2? I haven't studied it.

17 That's just my recollection.

18 MS WOODS: The government's position is that Section

19 3A1.2(a) applies because the victim in this case, that is

20 Sajeeb Wazeed Joy, is the son of the prime minister of

21 Bangladesh so he's an immediate family member of a government

22 official and was targeted because of that status and therefore

23 in the government's view the enhancement applies.

24 THE COURT: You're saying that the Sentencing

25 Commission had in mind relatives of government officials in

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1 foreign countries?

2 MS WOODS: Yes, your Honor. That's the government's  
3 position.

4 THE COURT: And Mr. Ser -- again I'm not resolving  
5 this today, so we're clear on it, nothing wrong with that  
6 agreement to disagree, but it did kind of jump out at me,  
7 because I didn't quite see how it fit this case -- what's your  
8 position on this?

9 MR. SER: Exactly what your Honor questioned, whether  
10 the guidelines apply to a relative outside the United States.

11 THE COURT: A relative of a government official?

12 MR. SER: All of whom are outside the United States,  
13 correct.

14 THE COURT: We'll address that obviously at the  
15 appropriate time.

16 Q. Mr. Thaler, have you clearly understood everything that's  
17 happened here so far today?

18 A. Yes, sir.

19 Q. Now that you have been advised of the charges against you,  
20 the possible penalties that you face, and the rights that  
21 you're giving up, is it still your wish to plead guilty to  
22 Counts 2 and 4 of the indictment?

23 A. Yes, your Honor.

24 THE COURT: Ms Woods, would you summarize for me what  
25 you expect the government to prove if this case went to trial.

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1 MS WOODS: If this case were to go to trial the  
2 government would prove beyond a reasonable doubt that from  
3 September 2011 through March of 2012 the defendant, Johannes  
4 Thaler, aided and abetted his co-defendant, former FBI Special  
5 Agent Robert Lustyik, in soliciting cash payments in return for  
6 disclosing internal confidential law enforcement information to  
7 which Lustyik had access by virtue of his position with the  
8 FBI.

9 The government's evidence, including testimony from  
10 witnesses, as well as e-mails and text message communication  
11 between Mr. Thaler and his co-defendant, Special Agent Lustyik,  
12 and Mr. Ahmed, would establish that Mr. Thaler on behalf of  
13 Mr. Lustyik sought a \$40,000 retainer fee and regular monthly  
14 payments of \$30,000 from his co-defendant, Mr. Ahmed, in  
15 exchange for Mr. Lustyik's official action in providing  
16 information to Mr. Ahmed who was a native of Bangladesh and was  
17 seeking information so that he could cause both reputational as  
18 well as physical harm to the son of the current prime minister  
19 of Bangladesh.

20 With respect to Count 4, if this case were to go to  
21 trial, the government would prove beyond a reasonable doubt  
22 that during that same time period, Mr. Thaler conspired with  
23 co-defendants, Special Agent Lustyik and Mr. Ahmed, to commit  
24 honest services wire fraud in violation of 18 U.S.C. Section  
25 1343. The government's evidence would include witness

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1 testimony as well as the e-mail exchanges and the text message  
2 communications between the co-defendants, which established  
3 that the defendants agreed together to deprive the American  
4 citizens and the FBI of the right to the honest services of  
5 Special Agent Robert Lustyik for the purpose of executing the  
6 aforementioned bribery scheme and that in carrying out that  
7 scheme the defendants, including Mr. Thaler, transmitted by  
8 means of interstate wires, various e-mails and text messages.

9 THE COURT: Thank you, Ms Woods.

10 Q. Mr. Thaler, did you hear what the prosecutor just said?

11 A. Yes, sir.

12 Q. Is it substantially accurate?

13 A. Yes, sir.

14 Q. What I need you to do now is tell me in your own words what  
15 you did that makes you believe that you're guilty of the crimes  
16 to which you have pleaded guilty. Are you going to be reading  
17 from a prepared statement?

18 A. Yes, sir.

19 Q. Nothing wrong with that. I just want to make sure that  
20 this is a document or a statement that you've prepared in  
21 conjunction with your attorney or the assistance of your  
22 attorney.

23 A. Yes, I have.

24 Q. You can read that.

25 A. From in or about September 2011 through in and about March

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1 2012 in the Southern District of New York I aided and abetted  
2 Robert Lustyik, who during this time was an agent with the  
3 United States Federal Bureau of Investigation, in soliciting  
4 cash payments from individuals with the corrupt intention that  
5 Robert Lustyik be influenced to disclose confidential  
6 governmental information that Robert Lustyik has access to by  
7 virtue of his position with the FBI. At the time this occurred  
8 I knew I what I was doing was illegal.

9 From in and about September 2011 through in and about  
10 March 2012, in the Southern District of New York, I agreed with  
11 others to participate in a fraudulent scheme to deprive the  
12 citizens of the United States of Robert Lustyik's honest  
13 services as an agent of the FBI. I knew the objective of the  
14 conspiracy. I knowingly and voluntarily participated. During  
15 the conspiracy my conduct included sending and receiving  
16 e-mails, telephone calls and text messages relating to the  
17 bribery conduct. At the time this occurred, I knew what I was  
18 doing was illegal and acted with the specific intent to deprive  
19 the United States of Robert Lustyik's honest services.

20 MR. SER: Your Honor, we'll stip that the  
21 transmissions occurred via interstate wire.

22 THE COURT: Meaning the e-mails and text messages?

23 MR. SER: Correct, your Honor.

24 Q. Do you agree with that, Mr. Thaler?

25 A. Yes, your Honor.

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1 Q. Where were you when you were engaged in these activities,  
2 between September of 2011 and March of 2012? Where were you  
3 physically?

4 A. Connecticut, I guess.

5 Q. Where was Mr. Lustyik?

6 A. In New York.

7 Q. Where was his office?

8 A. He worked in White Plains, New York.

9 Q. Here in the Southern District of New York?

10 A. Yes, sir.

11 Q. When he worked here in White Plains, he was working as an  
12 FBI agent, is that correct?

13 A. Yes, sir.

14 Q. You knew that?

15 A. Yes, sir.

16 Q. Did you know at the time that you did these things that  
17 what you were doing was wrong and against the law?

18 A. Yes, sir.

19 Q. Did anyone threaten you or coerce you or force you to do  
20 those things?

21 A. No, your Honor.

22 THE COURT: Ms Woods, do you believe there's a  
23 sufficient factual predicate for a guilty plea to both Counts 2  
24 and 4?

25 MS WOODS: Yes, your Honor.



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1 THE COURT: Mr. Ser, do you agree with that?

2 MR. SER: Yes, your Honor.

3 THE COURT: Are there any additional questions either  
4 of you would like me to ask the defendant?

5 MS WOODS: No, your Honor.

6 MR. SER: No, your Honor.

7 THE COURT: Mr. Ser, do you know of any valid defense  
8 that would prevail at trial or any reason why your client  
9 should not be permitted to plead guilty?

10 MR. SER: No, your Honor.

11 Q. Mr. Thaler, how do you now plead to the charge in Count 2  
12 of the indictment, guilty or not guilty?

13 A. Guilty.

14 Q. How do you now plead to the charge in Count 4 of the  
15 indictment, guilty or not guilty?

16 A. Guilty.

17 Q. Are you in fact guilty of the charge in Count 2?

18 A. Yes, your Honor.

19 Q. Are you in fact guilty of the charge in Count 4?

20 A. Yes, your Honor.

21 Q. Are you pleading guilty voluntarily and of your own free  
22 will as to Count 2?

23 A. Yes, sir.

24 Q. Are you plead guilty voluntarily and of your own free will  
25 as to Count 4?

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1 A. Yes, sir.

2 THE COURT: On the basis of the defendant's responses  
3 to my questions and my observations of his demeanor I'm  
4 satisfied that he understands his rights and he waives them  
5 knowingly and voluntarily with an understand of the  
6 consequences of his guilty plea including the potential  
7 sentences that may be imposed; further, that he has voluntarily  
8 pleaded guilty, that he has admitted he is guilty as charged in  
9 Counts 2 and 4 of the indictment, and that his plea is entered  
10 knowingly and voluntarily and supported by an independent  
11 factual basis as to each and every element of the crimes  
12 charged. Accordingly, I accept the defendant's guilty plea and  
13 adjudge him guilty on the charges in Counts 2 and 4 of the  
14 indictment.

15 I'll direct that a presentence investigation be  
16 conducted by the Probation Office and that a presentence report  
17 be prepared.

18 Mr. Thaler, you're going to be interviewed by a  
19 probation officer as part of the presentence investigation and  
20 when you do that you should definitely have your attorney with  
21 you. If you say anything to the probation officer make sure  
22 that what you say is truthful and accurate because I'll tell  
23 you now that the presentence report is important to me,  
24 including any descriptions of anything that you've said to the  
25 probation officer, in deciding what sentence to impose. So as

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1 I say, make sure that you do speak to the probation officer,  
2 what you tell him or her is truthful and accurate. Will you to  
3 that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: You and your attorney will have an  
6 opportunity to examine the report and challenge and comment on  
7 it before I sentence you. So for that reason it's important  
8 that you read the presentence report carefully and discuss it  
9 with your attorney before your sentencing date. If there are  
10 any mistakes in the report or anything you object to in the  
11 report you need to point them out to your attorney so he can  
12 bring those things to my attention before I impose sentence.  
13 Will you do that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And at the time of sentencing both you and  
16 your attorney will also have the right to speak on your behalf  
17 before I impose sentence. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I'm going to schedule sentencing  
20 approximately 90 days from today.

21 THE COURTROOM DEPUTY: Friday, January 23, 2015 at  
22 11:30.

23 THE COURT: Before I set that date, I understand that  
24 Mr. Thaler has pleaded guilty in another case in the District  
25 of Utah. When is the sentencing date in that case?

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1 MS WOODS: I believe that's January 5, your Honor.

2 THE COURT: So this would not conflict with that, is  
3 that correct?

4 MS WOODS: No.

5 MR. SER: That's correct, your Honor, I agree.

6 THE COURT: Does that work for both counsel, January  
7 23rd at 11:30 a.m.?

8 MS WOODS: Yes, your Honor.

9 MR. SER: Yes, your Honor.

10 THE COURT: The sentencing is scheduled for January  
11 23, 2015 at 11:30 a.m. Any written submissions by the  
12 defendant will be due no later than one week before sentencing  
13 and any response by the government will be due no later than  
14 three days before sentencing, particularly if there is going to  
15 be a dispute about a guidelines provision. I know the  
16 defendant is out on bail. What's the government's position as  
17 to whether that status should continue?

18 MS WOODS: The government consents to continuing that  
19 status.

20 THE COURT: All right. Then I will continue the  
21 defendant's release on bail. Mr. Thaler, you understand that  
22 if you fail to return to my courtroom for sentencing on the  
23 date and time set which is January 23, 2015 at 11:30 a.m. you  
24 will be guilty of a separate crime which is called bail-jumping  
25 for which you could be sentenced to imprisonment and a fine

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1 separate and apart from and in addition to whatever sentence  
2 you might receive for the crimes to which you just pleaded  
3 guilty.

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you further understand that all the  
6 conditions on which you were released up until now continue to  
7 apply and that the consequences could be very serious if you  
8 violate any of those conditions?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Bail will be continued. Let me ask just  
11 one other question. Is any consideration being given to a  
12 Rule 20 transfer of this case, either of this case to Utah or  
13 the Utah case to here, since the defendant is going to be  
14 sentenced on both cases around the same time? You're not  
15 required to do that. Has any discussion been had? There is an  
16 efficiency in doing that. Mr. Ser, have you given any thought  
17 to that?

18 MR. SER: I have not thought about it nor have we  
19 discussed it. Certainly the parties will talk about it very  
20 quickly.

21 THE COURT: Just so we're clear, I'm not making any  
22 suggestion that you, it requires the consent of both parties,  
23 in fact it requires the consent of the United States Attorneys  
24 and the judges in both districts so it's a somewhat cumbersome  
25 process. But in the end, given the unique circumstances of

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1 this case, namely that the defendant, Mr. Thaler, and  
2 Mr. Lustyik, were charged both in the District of Utah and the  
3 Southern District of New York at approximately the same time  
4 and that Mr. Thaler is going to be sentenced in both districts  
5 or in both cases at approximately the same time, it just  
6 occurred to me that you might want to at least consider it.  
7 But I'll leave that up to you. It's just a matter of  
8 curiosity.

9 MR. SER: I appreciate the suggestion, your Honor, the  
10 parties will talk.

11 THE COURT: Anything else we need to do today with  
12 respect to Mr. Thaler?

13 MS WOODS: No, your Honor.

14 THE COURT: Mr. Ser?

15 MR. SER: No, your Honor your Honor, thank you.

16 THE COURT: Thank you all very much. I'll see you on  
17 January 23rd.

18 Mr. Ser, are you aware that defense counsel are now  
19 under an obligation to at least schedule a presentence  
20 interview within the next two weeks? It doesn't have to occur  
21 within the next two weeks but you have to agree on a date  
22 within two weeks. And Ms Woods, the standing order requires  
23 the government to provide its proposed offense conduct portion  
24 of the presentence report to the probation officer within the  
25 next two weeks, so I'll expect you all to comply with that.

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1 MS WOODS: Yes, your Honor.

2 THE COURTROOM DEPUTY: All rise.

3 This court will be in recess.

4 (Proceedings adjourned)

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